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Plaintiff/Attorney

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

EARLY WARNING SERVICES, LLC

Plaintiffs,

v.

MR. WARREN V. JOHNSON;  
BRANDON O'LOUGHLIN; P.A.Z.E.,  
LLC

Defendants.

Case No.:

**DEFENDANT MR. WARREN  
JOHNSON'S COUNTER  
DECLARATION TO MR.  
PARAS SHAH'S  
DECLARATION IN SUPPORT  
OF PLAINTIFF'S REPLY**

Defendant Mr. Warren Johnson's ("Warren") Counter Declaration to Plaintiff Mr. Paras Shah's ("Mr. Shah") Declaration supporting the EWS Reply to Warren's Response to Plaintiff's Motion for a Preliminary Injunction, states as follows:

**I. KEY POINTS**

**• LIMITED TENURE AND INVOLVEMENT OF PARAS SHAH**

- Mr. Shah's brief tenure at EWS and limited involvement in significant intellectual property matters limit his ability to provide accurate testimony regarding my practices and responsibilities.

**• CHALLENGING SHAH'S PERSONAL KNOWLEDGE**

- Mr. Shah lacks firsthand knowledge of the intellectual property indexes and other work processes that I managed, undermining the credibility of his statements.

1     **• RELEVANCE AND APPLICATION OF INTELLECTUAL PROPERTY**  
 2     **POLICY**

- 3         ○ The 2017 Intellectual Property Policy cited by Mr. Shah is outdated and  
 4         irrelevant, as it had been replaced by a more recent policy that I drafted and  
 5         updated.

6     **• CONTENT AND SECRECY OF THE INDEXES**

- 7         ○ The indexes I maintained did not contain sensitive information that could be  
 8         considered trade secrets, and any entries were kept broad and nonspecific to  
 9         prevent disclosure.

10    **• CLARIFICATION ON METADATA AND EMAIL COMMUNICATIONS**

- 11         ○ The presence of Frankie Ho's name in the metadata is due to the use of a  
 12         template from my previous employment, and the email to Ms. Cheney was not a  
 13         threat but a rhetorical statement.

14    **• REQUEST FOR DISMISSAL**

- 15         ○ Given the lack of personal knowledge and the reliance on outdated policies, I  
 16         request that the court dismiss the claims against me and deny the Plaintiff's  
 17         motion for a preliminary injunction.

18    **II. INTRODUCTION**

19         I am a Defendant in this case, I have personal knowledge of the facts stated herein,  
 20         and if called as a witness, I will competently testify to these facts.

21         **Limited Tenure of Mr. Shah:** Mr. Paras Shah was employed at Early Warning  
 22         Services (EWS) for a brief period of three months before my departure. During this time,  
 23         his involvement in significant intellectual property matters, policies, and procedures was  
 24         minimal, as he was based in Chicago. Mr. Shah's declaration is primarily based on  
 25         information provided by Ms. Cheney, rather than his firsthand experience.

26         **Mr. Shah's Hiring and Training:** Upon informing Ms. Cheney of my intention  
 27         to seek new employment, I volunteered to providing up to 30 days' notice and to hiring  
 28         and training my replacement to ensure a smooth transition. I hired Mr. Shah in October.

1 As his direct supervisor and sole trainer during our brief overlap, I was fully aware of all  
2 projects, meetings, and assignments given to Mr. Shah.

3 **Mr. Shah's Handling of Warren's Indexes:** Due to geographical separation,  
4 with Mr. Shah in Chicago and myself in Arizona, our collaboration was limited despite  
5 my role as his direct supervisor and trainer. Mr. Shah was not privy to my practices or  
6 rationale, contrary to his claims. The manner in which Mr. Shah currently manages his  
7 indexes is his choice and bears no relevance to my practices or this lawsuit. What is  
8 pertinent is how I managed the indexes and the content I included.

9 To clarify, the specific entries I made in the indexes are not of significant  
10 relevance, as I deleted all information to create templates. At the time of emailing the  
11 indexes, I was adhering to standard work practices, despite the misinterpretations  
12 presented by Ms. Cheney and Mr. Shah for their purposes.

### 13 **III. MR. SHAH'S LACK OF "PERSONAL KNOWLEDGE"**

#### 14 **A. LEGAL STANDARD**

15 In legal proceedings, the concept of "personal knowledge" is a  
16 cornerstone of the credibility and admissibility of declarations and testimonies.  
17 Personal knowledge refers to information that a declarant has directly acquired  
18 through their own experiences or observations, rather than through hearsay,  
19 secondhand accounts, or speculation. This requirement is fundamental to the  
20 admissibility of evidence in court, ensuring that the information provided is  
21 based on firsthand experience, which is inherently more accurate and  
22 trustworthy.

23 In the case at hand, the Mr. Paras Shah's Declaration ("Shah's Dec") must  
24 be rigorously examined for personal knowledge. Any instances where the Mr.  
25 Shah fails to demonstrate true personal knowledge of the matters he discusses,  
26 either due to his short tenure with Warren or because what he is declaring  
27 happened prior to his arrival, there must be an exclusion of those statements.  
28

1 **B. THE INTELLETUAL PROPERTY POLICY FROM 2017 IS NOT**  
 2 **RELEVANT**

3 Mr. Shah references an Intellectual Property Policy from 2017 to support  
 4 his assertion that I should have known about the need for authorization to  
 5 email myself copies of the indexes. It is important to note that the 2017 IP  
 6 Policy had been supplanted by a more recent policy that I drafted and updated  
 7 annually during my tenure at EWS. Additionally, the policy Mr. Shah cites  
 8 refers to a "patent database," not the "indexes" that I managed. This distinction  
 9 is crucial, as the terminology and scope of the policies differ significantly, and  
 10 Mr. Shah's reliance on an outdated document misrepresents the current  
 11 practices at EWS.

12 **IV. NO "PERSONAL KNOWLEDGE" OF MY JOB DUTIES**

13 I was Mr. Shah's direct supervisor and was aware of all information he was  
 14 exposed to for the three months we worked together. This information regarding my  
 15 "duties" must have been provided by Ms. Cheney, and not accurately, yet Mr. Shah  
 16 presents them as if they were his own "personal knowledge."

17 **A. WARREN HAD NO DUTY TO POPULATE THE INDEXES**

18 Mr. Shah asserts that I was required to populate and maintain certain  
 19 indexes within EWS's legal department. (*id. at* ¶3). However, as his direct  
 20 supervisor and the primary individual responsible for those indexes, I can  
 21 confirm that populating these indexes was a discretionary task that I undertook  
 22 to enhance the efficiency of my work. At no time was I under any formal  
 23 obligation to maintain these indexes, nor were they considered essential to my  
 24 job duties. Furthermore, Mr. Shah's tenure at EWS was too brief to provide  
 25 him with sufficient insight into my work practices.at EWS.

26  
 27 **B. MY INDEXES COULD NOT DISCLOSE AN INVENTION**

28 **1. Legal Standard of Undue Experimentation**

1           The legal concept of "undue experimentation" refers to the level  
 2 of disclosure required to enable a person skilled in the art to  
 3 understand the invention. It must be demonstrated by "clear and  
 4 convincing evidence that a person of ordinary skill in the art would not  
 5 be able to practice the claimed invention without undue  
 6 experimentation" (Alcon Research, 745 F.3d at 1188, quoting *In re*  
 7 *Wands*, 858 F.2d 731, 36-37 (Fed. Cir. 1988)).

## 8           **2. Warren's Entries In His Indexes Did Not Meet the Undue** 9           **Experimentation Standard**

10           Mr. Shah's claim that the titles and notes in the indexes could  
 11 disclose sensitive information or trade secrets is unsupported by the  
 12 facts. (*Id.* ¶4-5) The entries I made in the Concept Brief Index and  
 13 Invention Disclosure Index were intentionally broad and nonspecific.  
 14 This strategy ensured that no detailed or confidential information was  
 15 revealed, even if the indexes were subject to discovery. Furthermore, I  
 16 did not include any legal advice or consultations in these indexes,  
 17 thereby safeguarding the confidentiality of EWS's intellectual  
 18 property.

19           Mr. Shah's assertion that my notes contain "details of  
 20 consultations" is also incorrect. (*Id.* at ¶6) I deliberately did not  
 21 include details of consultations or legal conclusions in the indexes.  
 22 From the outset at Ping® and continuing into my time at EWS, I  
 23 populated the indexes as if they were discoverable,<sup>1</sup> ensuring  
 24 confidentiality was maintained. This version maintains the original  
 25 content's intent while enhancing clarity and readability for judicial  
 26 review.

27           <sup>1</sup> This is likely the first meaningful thing I instructed Mr. Shah on when hired: treat the  
 28 indexes as if they are dediscoverable. That has always been my standard of care with my  
 indexes.

1                   **C. MR. SHAH CANNOT HAVE PERSONAL KNOWLEDGE ABOUT MY**  
 2                   **TREATMENT OF THE INDEXES PRIOR TO HIS ARRIVAL**

3                   Mr. Shah's assertion that the confidentiality of my indexes provides Early  
 4                   Warning Services (EWS) with a competitive advantage and that maintaining  
 5                   their secrecy is crucial for protecting trade secrets is not supported by the facts.  
 6                   His claim that secrecy was my priority during the eight years I managed the  
 7                   indexes is unfounded and not based on his personal knowledge. I did not take  
 8                   measures to keep the indexes secret, rendering the assertions regarding trade  
 9                   secrets inherently false.

10                  I did not label any content within the indexes as a trade secret. For  
 11                  example, in the Invention Disclosure Index, I used code words like "Stealth"  
 12                  instead of explicitly identifying information as a trade secret. This approach  
 13                  ensured that sensitive details remained obscured, even if the indexes were  
 14                  subject to discovery.

15                  Furthermore, Mr. Shah's and Ms. Cheney's declarations address topics  
 16                  about which they lack personal knowledge, which undermines their credibility.  
 17                  For instance, Mr. Shah's claims about restricted access and measures to ensure  
 18                  the secrecy of the indexes are stated in the present tense. In reality, neither Mr.  
 19                  Shah nor Ms. Cheney had personal knowledge of who I granted access to my  
 20                  indexes or the reasons for such access, as I never disclosed this information to  
 21                  them.

22                   **V. NO PERSONAL KNOWLEDGE OF THE PRIVILEGED CHAT**

23                  Mr. Shah had *no personal knowledge* of the "privileged chat." While I was his  
 24                  direct supervisor I gave him no information, let alone firsthand information regarding  
 25                  the Privileged Chat.

26                  Mr. Shah's declaration regarding his personal knowledge must be information that  
 27                  Ms. Cheney imparted to Mr. Shah recently. (Id at ¶10) Ms. Cheney and I were the only  
 28                  parties to the Privileged Chat. Neither Mr. Shah or myself were ever involved in the

1 negotiations or the discussions surrounding the contract the Privileged Chat focuses on.  
 2 That is also why the Privileged Chat came to be in the first place, it is Warren  
 3 complaining to Ms. Cheney that he felt he should have been involved in the contract  
 4 negotiations and then Ms. Cheney's indifferent reaction.

5  
 6 **VI. MR. SHAH CONFUSES THE PATENT DATABASE AND THE PATENT**  
 7 **INDEX, AND THEIR RESPECTIVE CONTENTS**

8 **A. THE PATENT INDEX IS NOT THE PATENT DATABASE**

9 Mr. Shah conflates the substantial resources invested in developing the  
 10 Patent Database with the minimal resources required to maintain the Patent  
 11 Index, Invention Disclosure Index, and Concept Brief Index. He asserts that  
 12 "EWS has invested significant resources to develop, maintain, and safeguard  
 13 its indices. EWS invested these resources during Johnson's employment, and  
 14 continues to make these investments to this day" (Id. at ¶9).

15 Mr. Shah cannot have known how much resources were invested in  
 16 making the Indexes over a period of 8 years prior to his arrival, and I populated  
 17 the indexes for my own reasons. This cost EWS nothing.

18 Mr. Shah's also makes the somewhat outlandish claim that salaries paid  
 19 to employees constitute a "substantial investment of work, energy, and money"  
 20 for trade secret protection. *Id.* By that logic every task performed by any  
 21 employee would create trade secrets, rendering the requirement moot.

22  
 23 **VII. EWS KNOWS I HAD THE EVIDENCE TO DISCREDIT MS. CHENEY'S**  
 24 **DECLARATION**

25 Contrary to Mr. Shah's assertions, EWS was aware that I possessed copies of my  
 26 performance reviews. I have evidence that challenges the accuracy and completeness of  
 27 Ms. Cheney's account regarding my termination (Id. ¶18). These documents were  
 28 exhibits in my Wrongful Termination Complaint. (See EXHIBIT 2).

1           Additionally, contrary to Mr. Shah's Declaration, I never served the wrongful  
2           termination complaint documents directly on EWS (See EXHIBIT 1). However, I did  
3           provide a complete version to their outside counsel, who would have shared it with  
4           them. This version included the documents Mr. Shah claims EWS was unaware I  
5           possessed.

6           Mr. Shah also alleges a two-year connection between me and the other defendants  
7           based solely on metadata. This is yet another assumption made by Mr. Shah to support  
8           Ms. Cheney's conspiracy theory.

9  
10       **IX. MR. SHAH PERSONAL KNOWLEDGE ABOUT FRANKIE HO AND MY**  
11       **LETTER TO MS. CHENEY**

12           It is true that Frankie Ho was my supervisor at Ping® golf. This fact is central to  
13           the metadata issue: he never worked at EWS. Yet, he is listed as the author of the  
14           indexes in question. (Id. ¶19)

15           Regarding the metadata in the indexes, the presence of Frankie Ho's name is  
16           explained by my use of a template originally created during my time at Ping Golf. This  
17           does not indicate any involvement by Mr. Ho at EWS. As for the email communication  
18           with Ms. Cheney, while it may have been ill-advised, it was not intended as a threat.  
19           My reference to Elizabeth Warren was a rhetorical device rather than an indication of  
20           any personal connection or intent to act against EWS.

21       **X. CONSLUSION**

22           In conclusion, I respectfully request that the court dismiss the claims against me  
23           and deny the Plaintiff's motion for a preliminary injunction. The majority of Mr. Shah's  
24           declaration is based on information he did not personally observe or verify, rendering it  
25           unreliable. Furthermore, the policies and practices cited in Mr. Shah's declaration do  
26           not accurately reflect the operations during my tenure at EWS.

27           I declare under penalty of perjury that the foregoing is true and correct.  
28



Respectfully submitted of \_19\_\_ day of \_August, 2024

          /Warren V Johnson/            
Warren Johnson

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## Certificate of Service

I, Warren V. Johnson, hereby certify that on August 19, 2024, I electronically filed the foregoing Counter Declaration to Plaintiff's Declaration in Support of the Reply to Warren's Response to Plaintiff's Motion for a Preliminary Injunction with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Respectfully submitted this \_\_19\_\_ day of \_\_August\_\_, 2024

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